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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTONES

B-11/3722

Ingust 31, 196

GAO REFERRAL NOT REQUIRED

Hr. Allan W. Dalles, Director Contral Intelligence Agency

Dear Mr. Dullage

On August 1, 1960, you requested our decision concerning the propriety of a proposed regulation under which certain employees, upon their separation from the Central Intelligence Agency, would be granted asparation compensation.

The manetary benefits provided under the proposed regulation would be payable only to those employees of the Contral Intellige to Agency who are separated as surplus and whose previous experience (a) the Agency consisted of such highly specialized and unique activities as to hamper seriously their opportunity for employment elsewhere. You say that the regulation will not benefit any employee who is separated for cause or whose employment is terminated under the Armonia. Selection Out Program or who voluntarily retires. You consider that the program contemplated under the proposed regulation not only welld be equitable to employees who may be separated as surplus how is necessary in connection with the recruitment of new career espisare espisar Your concluding persgraph is to the effect that the program contends in under the proposed regulation is urgently needed to enable your Agency to carry out its function under an efficient and effective persons al Management program.

In general, neser the proposed regulation the amount of separation compensation would vary in individual cases depending spon too salary rate of the employee and the length of continuous service (up to 1 years) with the Agency. In no event could the total amount sayable exceed twelve months! basic salary at the rate the individual was exceed twelve months! basic salary at the rate the individual was exceed twelve months! basic salary at the rate the individual was exceiving immediately prior to separation or at the highest solveduic rate of grade GS-lip, whichever is less. The statutory authority a der which the regulation would be issued is that appearing in section (formerly section 10) of the Central Intelligence Agency Act of 19.9, as amended, 50 U.S.C. h03j, on the ground that the Agency is impose no new conditions of employment on its personnel which warrant saiditional compensation. The regulation would apply prospectively to separat one within their scope. Cf. 31 Comp. Ocn. 191. The cited section is a pertinent part as follows:

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- s(a) Notwithstanding any other provisions of law sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—
 - (1) personal services, including personal services without regard to limitations on types of persons to be employed to we
- (b) The sums made svailable to the Agency may be expended without regard to the provisions of law and regalations relating to the expenditure of Government regalations relating to the expenditure of Government

We note that many of the purposes for which Agency funds pay be expenses "notwithstanding any other provisions of law" are specifically enumerated in subsection (a) which enumeration includes *personal pervises." The question arises, therefore, whether expenditures for personal services" properly may include separation compensation which under the proposed regulation would continue to be made often the personal service relationship between the Agency and the e-ployis terminated. While the matter not entirely free from doe to think that separation compensation reasonably may be viewed as a tree of delerred compensation which, under your regulation, would be exten as an employee but would be payable at and after his separation. Succ compensation would be based upon continued perferance; over a period of years, of an mausual type of service and the amount to white any individual would be emtitled would be in direct proportion ar sect to the maximum limitation to the length of Agency service reviewed There is so doubt concerning your authority to fix compensation and vicating the payments provided for under the proposed regulation as compensation, we think that it is ressenable to conclude that they constitute expenditures for secretal services as that term s ward in section 8(a).

It is noteworthy, herever that the emmeration of purpe es a section 0(a) for which number may be expended notwithstanding of other provisions of law is not exclusive. The section commercial plates of law is not exclusive. The section commercial plates that your agency may make additional expenditures (other than for that your agency may make additional expenditures may be made with functions" and under subsection (b) expenditures may be made with regard to provisions of law and regulations relating to the opening of Occament funds. Hence, even if separation compensation of Occament funds. Hence, even if separation compensation were garded as an expenditure for other than sporsonal services, such expenditure reasonably might be regarded as permitted by the standard provided it was "necessary to carry out" the functions of your Agency in the functions of your Agency is carry out.

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Having regard for the necessity of separating "as surplus" certain career personnel in your agency after comparatively short periods of service, the probable difficulty these employees say encounter in effecting transfers to other positions or finding other suitable employment after their separation from your agency, and the difficulty your agency expects to experience in the recruitment of required numbers of career personnel for certain types of positions the expenditures for separation compensation reasonably may be the as expenditures "for purposes necessary to carry out" the functions of your agency whether such separation compensation be regarded as an expenditure for "personal services" or otherwise.

regulation along the lines proposed. We note, however, that the proposed regulation does not expressly cover a situation in which death of a individual entitled to separation compensation occurs prior to his receipt of the full smount of separation compensation otherwise pays while we presume it is intended that death would extinguish that it to separation compensation that was not payable prior to the date thereof, it would be preferable if your regulation would clarify to matter.

It is noted from your letter of August 4, 1960, that appropriations of the Congress have been informed of the proposed regulation. While, as stated above, we are of the opinion that level authority exists for the granting of separation compensation to certain employees of the Central Intelligence Agency, we suggest that the regulation not be issued until such time as any questions raised by the congressional committees to whom the plan has been substituted are resolved.

Sinceraly yours

Comptroller General of the United States